

2009 DRAFTING REQUEST

Bill

Received: 04/07/2009

Received By: mkunkel

Wanted: As time permits

Identical to LRB:

For: Jim Sullivan (608) 266-2512

By/Representing: Amy

This file may be shown to any legislator: NO

Drafter: mkunkel

May Contact:

Addl. Drafters: mshovers

Subject: Fin. Inst. - int. rates/loans

Extra Copies:

Submit via email: YES

Requester's email: Sen.Sullivan@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Small loan companies

Instructions:

Redraft 2007 LRB-2221/3

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mkunkel 04/07/2009	jdye 04/07/2009		_____			State Crime
/1			mduchek 04/07/2009	_____	lparisi 04/07/2009	mbarman 06/23/2009	State Crime
/2	mkunkel 08/12/2009	bkraft 08/13/2009	mduchek 08/14/2009	_____	mbarman 08/14/2009	mbarman 08/14/2009	State Crime
/3	mkunkel	jdye	mduchek	_____	lparisi	lparisi	State

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	09/01/2009	09/01/2009	09/01/2009 _____		09/01/2009	09/01/2009	Crime
/4	mkunkel 02/05/2010	bkraft 02/05/2010	rschluet 02/05/2010 _____		sbasford 02/05/2010	sbasford 02/05/2010	

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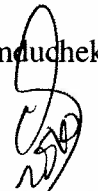
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Addl. Drafters: **mshovers**

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Extra Copies:

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Carbon copy (CC:) to:

Pre Topic:

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Submit via email: **YES**

Requester's email: **Sen.Sullivan@legis.wisconsin.gov**

Carbon copy (CC:) to: **AR6**

Pre Topic:

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Topic:

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/?	mkunkel	1 4/7 jld					

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FOOT

10 - NOTE

~~2007 BILL~~

2009 BILL

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- 1 AN ACT *to amend* 21.72 (1) (a) 12., 49.857 (1) (d) 12., 73.0301 (1) (d) 6., 138.09
- 2 (1m) (a), 138.09 (3) (f), 138.10 (2m), 138.10 (15), 220.02 (2) (b), 220.04 (10),
- 3 220.285 (1), 403.414 (7), 422.201 (3) and 425.301 (4); and *to create* 59.69 (4h),
- 4 62.23 (7) (hi), 138.09 (1a), 138.09 (3) (e) 1. g. and 138.14 of the statutes; **relating**
- 5 **to:** regulating consumer small loans, limiting the areas in which a payday
- 6 lender may operate, granting rule-making authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, a lender other than a financial institution (i.e., a bank, savings bank, savings and loan association, or credit union) generally must obtain a license from the Division of Banking (division) in the Department of Financial Institutions (DFI) to assess a finance charge greater than 18 percent. This type of lender is generally referred to as a "licensed lender." With certain limited exceptions, current law provides no maximum finance charge for a loan entered into by a licensed lender. A lender who makes payday loans is typically required to be a licensed lender. In a standard payday loan transaction, the lender accepts a personal check from the borrower, pays the borrower the amount of the check less any applicable finance charge, and agrees to wait a short time, such as two weeks, before depositing the check. Except for the requirement to obtain a license as a licensed lender, current law does not specifically regulate payday loan transactions.

Licenses. This bill creates requirements for regulating certain payday loan and similar transactions by prohibiting a person from making a "consumer small

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* loan[✓] to a Wisconsin resident unless the division[✓] issues a new license, that is created in the bill, to the person. The bill defines[✓] "consumer small loan" as an unsecured consumer loan in which the amount financed[✓] is ~~to~~ \$2,500 or less. The bill specifies that a consumer small loan includes an indebtedness evidenced by a promissory note or an agreement to defer presenting a check or debiting a consumer's bank account for a fee.[✓] A separate license is required for each place of business at which consumer small loans are made to Wisconsin residents.[✓] Financial institutions and their affiliates are exempt from the requirement to be licensed under the bill. Also, a person who is licensed under the bill to make consumer small loans is not required to be licensed as a licensed lender.[✓] is

Fees. Under the bill, if a borrower does not pay a consumer small loan[✓] in full upon expiration of the term of the loan, the licensee who made the loan may charge interest of not more than 2.75 percent per month. However, interest may not be assessed on any interest earned by the licensee. The bill also allows a borrower to prepay a consumer small loan in whole or in part.[✓] If a loan is prepaid[✓] in full, the licensee must, as specified in the bill, refund any unearned interest that has been assessed. In addition, the bill prohibits a licensee from assessing a fee or charge for accessing or using the statewide database described below. Except for a returned check fee,[✓] discussed below, the bill does not otherwise affect the fees, charges, or interest that may be assessed by a licensee.[✓]

Maximum liability and database.[✓] The bill prohibits a licensee from making a consumer small loan to a borrower that results in the borrower having an outstanding aggregate liability of more than \$600[✓] to all licensees who have made loans to the borrower. The bill requires[✓] DFI to contract with a third-party provider * to operate a single statewide database that licensees may access to determine compliance with the foregoing prohibition. The division[✓] must, by rule or order, specify a transaction fee that the database operator must charge licensees for accessing the database.[✓] In addition, the bill requires licensees to provide information to the database operator regarding the consumer small loans that they make and close. The bill also creates procedures that licensees must follow in the event that the database is not fully operational or that licensees are unable to access the database. The bill provides that any information in the database regarding a person's transactional history is confidential and not subject to the open records law.[✓]

Licensee requirements.[✓] The bill prohibits a licensee from doing any of the following: 1) making a consumer small loan to a borrower with an invalid social security number; 2) dividing or encouraging a borrower to divide a consumer small loan for the purpose of receiving a higher finance charge than is otherwise allowed under the bill;[✓] and 3) making false or deceptive statements regarding consumer small loans. The bill requires a licensee to do all of the following:[✓] 1) maintain in force a bond of no more than \$5,000[✓] for each place of business at which the licensee makes loans to Wisconsin residents; 2) post their license at each place of business or make them easily viewed on their Internet Web sites;[✓] 3) provide written notice to the division[✓] of changes of address for places of business; 4) comply with specified record-keeping and reporting requirements; and 5) provide borrowers with specified disclosures in both English and Spanish.[✓] The bill allows a licensee to charge a

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borrower a fee not exceeding \$15 for a returned check. Also, while the bill allows a licensee to bring an action against the borrower to collect the amount of a returned check, the bill prohibits a licensee from threatening or pursuing criminal action against the borrower.

Zoning requirements. Generally under current law, a political subdivision (political subdivision) a city, village, town, or county may engage in zoning and land use planning. This bill imposes some limitations on the locations in which a payday lender (a business, owned by a licensee, that makes consumer small loans) may operate. Generally under the bill, a payday lender may not operate in a political subdivision unless it receives a permit to do so from the political subdivision's governing body or zoning agency, and the governing body or zoning agency may not issue a permit to a payday lender if the business would be located within 1,500 feet of another payday lender or if the business would be located within 150 feet of certain residential zoning districts. A political subdivision may, however, enact a zoning ordinance that contains provisions even more restrictive than the conditions established in the bill. Also, if a political subdivision has enacted an ordinance regulating payday lenders that is in effect on the bill's effective date, the political subdivision may continue to enforce that ordinance. (payday lenders)

Other requirements. The bill creates other requirements for consumer small loans, including the following:

1. The bill specifies requirements for license applications, including the payment of a \$300 application investigation fee and an annual \$500 fee.
2. The bill requires the database to report invalid social security numbers to licensees or the division.
3. The bill allows the division to revoke or suspend licenses based on violations, promulgate rules and issue orders to enforce the bill's requirements, and assess administrative forfeitures of \$100 per day against licensees who fail to notify the database operator about loans that are closed.
4. The bill provides that a violation of any of the bill's requirements is a misdemeanor subject to a fine of not more than \$500, imprisonment for not more than six months, or both.
5. The bill allows a borrower to recover damages of \$250 or the amount of the consumer small loan, whichever is greater, as well as costs and attorney fees, from a person who makes a consumer small loan to the borrower in violation of the bill's requirements.
6. The bill voids any consumer small loan made by a person who does not have a license required under the bill and allows a borrower to recover any amounts paid to such a person.
7. The bill provides that licensees are not subject to civil forfeitures as a result of relying on inaccurate information contained in the database.
8. The bill allows a borrower to repay a consumer small loan with proceeds of a subsequent consumer small loan made by the same or another licensee or an affiliate of the same or another licensee. Interest on such a subsequent consumer small loan may not exceed 2.75 percent per month. In addition, if a licensee makes such a subsequent consumer small loan, the bill prohibits the borrower from

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INSERT 4-1

repaying the subsequent consumer small loan with another consumer small loan made by the same or another licensee or affiliate. ✓

* 9. The bill allows the division to operate the database described above, as an alternative to contracting with a third-party provider.

Finally, the bill eliminates a requirement under current law that certain annual reports made by licensed lenders to the division must be verified by oath or affirmation. Instead, the bill requires the reports to be made in the form and manner prescribed by the division. ✓

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted. ✓

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill. ✓

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 21.72 (1) (a) 12. of the statutes is amended to read:

2 21.72 (1) (a) 12. A license or certificate of registration issued by the department
3 of financial institutions, or a division of it, under ss. 138.09, 138.12, 138.14, 217.06,
4 218.0101 to 218.0163, 218.02, 218.04, 218.05, 224.72, or 224.93 or subch. III of ch.
5 551.

6 SECTION 2. 49.857 (1) (d) 12. of the statutes is amended to read:

7 49.857 (1) (d) 12. A license or certificate of registration issued under ss. 138.09,
8 138.12, 138.14, 217.06, 218.0101 to 218.0163, 218.02, 218.04, 218.05, 224.72, 224.93
9 or subch. III of ch. 551.

10 SECTION 3. 59.69 (4h) of the statutes is created to read:

11 59.69 (4h) PAYDAY LENDERS. (a) Definitions. In this subsection: ✓

12 1. "Consumer small loan" has the meaning given in s. 138.14 (1) (c). ✓

13 2. "Licensee" has the meaning given in s. 138.14 (1) (i). ✓

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1 3. "Payday lender" means a business, ✓ owned by a licensee, that makes
2 consumer small loans.

3 (b) *Limits on locations of payday lenders.* ✓ Except as provided in par. ✓ (c), no
4 payday lender may operate in a county unless it receives a permit to do so from the
5 county zoning agency, and the county zoning agency may not issue a permit to a
6 payday lender if any of the following apply: *e-applies*

7 1. The payday lender ✓ would be located within 1,500 ✓ feet of another payday
8 lender.

9 2. The payday lender would be located within 150 ✓ feet of a single-family or
10 2-family residential zoning district.

11 (c) *Exceptions.* ✓ 1. Paragraph (b) ✓ only applies in the unincorporated parts of the
12 county which have not adopted a zoning ordinance as authorized under s. ✓ 60.62 (1).

13 2. A county may regulate payday lenders by enacting a zoning ordinance that
14 contains provisions that are more strict than those specified in par. ✓ (b).

15 3. If a county has enacted an ordinance regulating payday lenders that is in
16 effect on the effective date of this subdivision *LRB* [revisor inserts date], the ordinance
17 continues to apply and the county may enforce the ordinance.

18 SECTION 4. ✓ 62.23 (7) (hi) of the statutes is created to read:

19 62.23 (7) (hi) *Payday lenders.* ✓ 1. In this paragraph:

20 a. "Consumer small loan" has the meaning given in s. ✓ 138.14 (1) (c).

21 b. "Licensee" has the meaning given in s. 138.14 (1) (i). ✓

22 c. "Payday lender" ✓ means a business, owned by a licensee, that makes
23 consumer small loans. ✓

BILL

SECTION 4

INSERT 6-12✓

1 2. Except as provided in subds. 3.✓ and 4.✓, no payday lender may operate in a
2 city unless it receives a permit to do so from the city council, and the city council may
3 not issue a permit to a payday lender if any of the following apply: *applies*

4 a. The payday lender would be located within 1,500 feet of another payday
5 lender.✓

6 b. The payday lender would be located within 150 feet of a single-family✓ or
7 2-family residential zoning district.

8 3. A city may regulate payday lenders by enacting a zoning ordinance that
9 contains provisions that are more strict than those specified in subd. 2.✓

10 4. If a city has enacted an ordinance regulating payday lenders that is in effect
11 on the effective date of this subdivision✓ *LRB* [revisor inserts date], the ordinance
12 continues to apply and the city✓ may enforce the ordinance.

13 SECTION 5. 73.0301 (1) (d) 6. of the statutes is amended to read:

14 73.0301 (1) (d) 6. A license or certificate of registration issued by the
15 department of financial institutions, or a division of it, under ss. 138.09, 138.12,
16 138.14, 217.06, 218.0101 to 218.0163, 218.02, 218.04, 218.05, 224.72, 224.93 or under
17 subch. III of ch. 551.

18 SECTION 6. 138.09 (1a) of the statutes is created to read:

19 138.09 (1a) This section✓ does not apply to any of the following:

20 (a) Banks, savings banks, savings and loan associations, trust companies,
21 credit unions, or any of their affiliates.✓

22 (b) Consumer small loans made under s. 138.14.✓

23 SECTION 7. 138.09 (1m) (a) of the statutes is amended to read:

24 138.09 (1m) (a) Before any person may do business under this section ~~or~~✓ charge
25 the interest authorized by sub. (7) ~~and before any creditor other than a bank, savings~~

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1 ~~bank, savings and loan association or credit union may, or~~ ✓ assess a finance charge
2 on a consumer loan in excess of 18% per year, that person shall first obtain a license
3 from the division. Applications for a license shall be in writing and upon forms
4 provided for this purpose by the division. An applicant at the time of making an
5 application shall pay to the division a nonrefundable \$300 fee for investigating the
6 application and a \$500 annual license fee for the period terminating on the last day
7 of the current calendar year. If the cost of the investigation exceeds \$300, the
8 applicant shall upon demand of the division pay to the division the amount by which
9 the cost of the investigation exceeds the nonrefundable fee.

10 **SECTION 8.** 138.09 (3) (e) 1. g. of the statutes is created to read: ✓

11 138.09 (3) (e) 1. g. A person who makes consumer small loans ✓ under s. 138.14. ✓

12 **SECTION 9.** 138.09 (3) (f) of the statutes is amended to read:

13 138.09 (3) (f) Every licensee shall make an annual report to the division for
14 each calendar year on or before March 15 of the following year. The report shall cover
15 include ✓ business transacted by the licensee under the provisions of this section and
16 shall give all reasonable and relevant information that the division may require. The
17 reports shall be made upon forms furnished in the form and manner prescribed ✓ by
18 the division ~~and shall be signed and verified by the oath or affirmation of the licensee~~
19 ~~if an individual, one of the partners if a partnership, a member or manager if a~~
20 ~~limited liability company or an officer of the corporation or association if a~~
21 ~~corporation or association.~~ Any licensee operating under this section shall keep the
22 records affecting loans made pursuant to this section separate and distinct from the
23 records of any other business of the licensee.

24 **SECTION 10.** 138.10 (2m) ✓ of the statutes is amended to read:

BILL**SECTION 10**

1 138.10 (2m) PAWNBROKING BY LICENSED LENDERS. The division of banking may
2 promulgate rules regulating the conduct of pawnbroking by persons licensed under
3 s. 138.09 or 138.14.✓

4 **SECTION 11.** 138.10 (15) [✓] of the statutes is amended to read:

5 138.10 (15) EXCEPTION. This section does not apply to any person that is
6 licensed under s. 138.09 or 138.14.✓

7 **SECTION 12.** 138.14 [✓] of the statutes is created to read:

8 **138.14 Consumer small loans.** (1) DEFINITIONS. In this section:✓

9 (a) "Affiliate" [✓] means, with respect to a person, another person who owns or
10 controls, is owned or controlled by, or is under common ownership or control with,
11 such person. In this paragraph "control" [✓] means any of the following:

12 1. For a corporation, direct or indirect ownership of, or the right to control, 10 [✓]
13 percent or more of the voting shares of the corporation, or the ability of a person to
14 elect a majority of the directors or otherwise effect a change in policy.✓

15 2. For any entity other than a corporation, the ability to change the active or
16 passive principals of the organization.✓

17 (b) "Check" has the meaning given in s. 403.104 (6).✓

18 (c) "Consumer small loan" [✓] means an unsecured consumer loan in which the
19 amount financed is \$2,500 [✓] or less. "Consumer small loan" [✓] includes an indebtedness
20 evidenced by a promissory note or an agreement to defer presenting a check or
21 debiting a consumer's bank account for a fee.

22 (d) "Database" [✓] means the statewide database described in sub. (14).✓

23 (e) "Database provider" [✓] means a 3rd [✓] party provider with whom the department
24 contracts to operate the database or, if the division elects to operate the database, the
25 division.

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- 1 (f) "Department" means the department of financial institutions.
- 2 (g) "Division" means the division of banking.
- 3 (h) "General order" means an order that is not a special order.
- 4 (i) "Licensee" means a person holding a license issued by the division under sub.

5 (5).

- 6 (j) "Special order" means an order against a person.

7 (2) LICENSE REQUIRED. A person may not make a consumer small loan to a
8 Wisconsin resident without first having obtained from the division a license under
9 sub. (5) for each place of business at which the person makes consumer small loans
10 to Wisconsin residents. Such a license is required for, and this section applies to, all
11 consumer small loans made to a Wisconsin resident, regardless of whether the loan
12 is made by face-to-face contact, mail, telephone, Internet, or any other means.

13 (3) EXEMPTIONS. This section does not apply to banks, savings banks, savings
14 and loan associations, trust companies, credit unions, or any of their affiliates.

15 (4) APPLICATIONS; FEES; BOND. (a) 1. Application for licenses under sub. (5) shall
16 be made to the division in writing in the form and manner prescribed by the division
17 and shall include all of the following:

18 a. Except as provided in subd. 3., if the applicant is an individual, the
19 applicant's social security number.

20 b. If the applicant is not an individual, the applicant's federal employer
21 identification number.

22 2. The division may not disclose any information received under subd. 1. a. or
23 b. to any person except as follows:

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1 a. The division may disclose information under subd. 1. a. or b. to the
2 department of revenue for the sole purpose of requesting certifications under s.
3 73.0301.

4 b. The division may disclose information under subd. 1. a. to the department
5 of workforce development in accordance with a memorandum of understanding
6 under s. 49.857.

7 3. If an applicant who is an individual does not have a social security number,
8 the applicant, as a condition of applying for a license, shall submit a statement made
9 or subscribed under oath or affirmation to the division that the applicant does not
10 have a social security number. The form of the statement shall be prescribed by the
11 department of workforce development. Any license issued in reliance upon a false
12 statement submitted by an applicant is invalid.

13 (b) At the time of making application, an applicant for a license shall pay to the
14 division a nonrefundable \$300 fee for investigating the application and a \$500
15 annual license fee. If the cost of the investigation exceeds \$300, the applicant shall
16 upon demand of the division pay to the division the amount by which the cost of the
17 investigation exceeds the nonrefundable fee.

18 (c) The division shall require any applicant or licensee to file and maintain in
19 force a bond in a sum not to exceed \$5,000 for each place of business at which the
20 applicant or licensee makes consumer small loans to a Wisconsin resident. The bond
21 shall be in a form prescribed by and acceptable to the division.

22 (5) LICENSES. (a) Upon the filing of an application under sub. (4) and the
23 payment of the required fees, the division shall investigate the relevant facts. Except
24 as provided in par. (b), if the division finds that the character and general fitness and
25 the financial responsibility of the applicant, and the members thereof if the applicant

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1 is a partnership, limited liability company, or association, and the officers and
2 directors thereof if the applicant is a corporation, warrant the belief that the business
3 will be operated in compliance with this section, the division shall issue a license to
4 the applicant. If the division does not make such finding, the division shall deny the
5 application.

6 (b) The division may not issue a license to an applicant if any of the following
7 applies:

8 1. The applicant fails to provide any information required under sub. (4) (a).

9 2. The department of revenue certifies under s. 73.0301 that the applicant is
10 liable for delinquent taxes.

11 3. The applicant fails to comply, after appropriate notice, with a subpoena or
12 warrant issued by the department of workforce development or a county child
13 support agency under s. 59.53 (5) and related to paternity or child support
14 proceedings.

15 4. The applicant is delinquent in making court-ordered payments of child or
16 family support, maintenance, birth expenses, medical expenses, or other expenses
17 related to the support of a child or former spouse, as provided in a memorandum of
18 understanding entered into under s. 49.857.

19 (c) A license shall remain in force and effect until suspended or revoked in
20 accordance with this section or surrendered by the licensee, and a licensee shall, on
21 or before each December 10, pay to the division the annual license fee for the next
22 succeeding calendar year.

23 (d) A license is not assignable and permits operation under it only at or from
24 the place of business specified in the license.

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1 (e) A licensee shall conspicuously post a license at the place of business where
2 the licensee makes consumer small loans, or if conducting business through the
3 Internet, on the licensee's Web site so that the license is easily viewed by a consumer.

4 (6) RELOCATION; OTHER BUSINESS. (a) Whenever a licensee changes the address
5 of its place of business to another location within the same city, village, or town, the
6 licensee shall give written notice thereof, in a form and manner prescribed by the
7 division, to the division within 10 business days of the relocation and the division
8 shall replace the original license with an amended license showing the new address.
9 No change in the place of business of a licensee to a different city, village, or town is
10 permitted under the same license.

11 (b) 1. Except as provided in subd. 2., a licensee may conduct, and permit others
12 to conduct, at the place of business specified in its license, one or more of the following
13 businesses not subject to this section:

14 a. A currency exchange under s. 218.05.

15 b. A seller of checks business under ch. 217.

16 c. A loan business under s. 138.09.

17 2. A licensee may not sell merchandise or conduct other business at the place
18 of business specified in the license unless written authorization is granted to the
19 licensee by the division.

20 (7) RECORDS; REPORTS. (a) Except as provided in par. (b), a licensee shall keep
21 such books and records in the licensee's place of business that, in the opinion of the
22 division, will enable the division to determine compliance with this section. A
23 licensee shall preserve the records of final entry used in such business for a period
24 of at least 2 years after the making of any loan recorded therein.

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1 (b) A licensee may keep the books and records specified in par. (a) at a single
2 location inside or outside of this state if the books and records are kept at a place of
3 business licensed under this section. A licensee shall organize the books and records
4 by the place of business where the records originated.

5 (c) A licensee shall keep the books and records affecting loans made pursuant
6 to this section separate and distinct from the records of any other business of the
7 licensee.

8 (d) A licensee shall make an annual report to the division for each calendar year
9 on or before March 15 of the following year. The report shall include business
10 transacted by the licensee under this section and shall give all reasonable and
11 relevant information that the division may require. The reports shall be made in the
12 form and manner prescribed by the division.

13 **(8) POWERS OF THE DIVISION.** (a) The division may issue any general or special
14 order in execution of or supplementary to this section.

15 (b) The division may promulgate such rules as it considers necessary for the
16 administration of this section, including rules establishing database transaction fees
17 and other fees considered reasonable and necessary by the division.

18 (c) The division shall have the same power to conduct hearings, take testimony,
19 and secure evidence as is provided in ss. 217.17 and 217.18.

20 (d) The division for the purpose of discovering violations of this section may
21 investigate the business of a licensee transacted under this section, and shall
22 investigate convictions reported to the division by any district attorney for violation
23 by a licensee of this section. The place of business, books of account, papers, records,
24 safes, and vaults of a licensee shall be open to inspection and examination by the
25 division for the purpose of such investigation and the division may examine under

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1 oath all persons whose testimony the division may require relative to such
2 investigation.✓

3 (e) The cost of any investigation, examination, or hearing, including witness
4 fees or any other expenses, conducted by the division under this section✓ involving a
5 licensee shall be paid by the licensee within✓ 30 days after demand therefore by the
6 division, and the state may maintain an action for the recovery of such costs and
7 expenses.✓

8 (f) Actual costs incurred by the division✓ to examine books and records
9 maintained outside of this state shall be paid by the licensee.✓

10 (9) REVOCATION AND SUSPENSION OF LICENSES.✓ (a) The division may suspend or
11 revoke any license issued under this section✓ if the division finds any of the following:

12 1. That the licensee has violated any provision of this section,✓ any rule
13 promulgated thereunder, or any lawful order of the division made thereunder.

14 2. That the licensee has violated any of the provisions of chs.✓ 421 to✓ 427.

15 3. That any fact or condition exists which, if it had existed at the time of the
16 original application for such license, would have warranted the division in refusing
17 to issue such license.✓

18 4. That the licensee made a material misstatement in an application for a
19 license or in information furnished to the division.✓

20 5. That the licensee has failed to pay the annual license fee or to maintain in
21 effect the bond required under sub.✓ (4) (c).

22 (b) The division shall restrict or suspend a license issued under this✓ section if
23 the division finds that the licensee is an individual who fails to comply, after
24 appropriate notice, with a subpoena or warrant issued by the department of
25 workforce development✓ or a county child support agency under s.✓ 59.53 (5) and

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1 related to paternity or child support proceedings or who is delinquent in making
2 court-ordered payments✓ of child or family support, maintenance, birth expenses,
3 medical expenses, or other expenses related to the support of a child or former
4 spouse, as provided in a memorandum of understanding entered into under s.
5 49.857.✓ A licensee whose license is restricted or suspended under this✓ paragraph is
6 entitled to a notice and hearing only as provided in a memorandum of understanding
7 entered into under s. 49.857✓ and is not entitled to any other notice or hearing under
8 this section.✓

9 (c) The division shall revoke a license issued under this section if the
10 department of revenue certifies under s. 73.0301✓ that the licensee is liable for
11 delinquent taxes. A licensee whose license is revoked under this✓ paragraph for
12 delinquent taxes is entitled to a notice under s. 73.0301 (2) (b) 1. b.✓ and a hearing
13 under s. 73.0301 (5) (a)✓ but is not entitled to any other notice or hearing under this
14 section.

15 (d) Except as provided in pars.✓ (b) and (c)✓, no license shall be revoked or
16 suspended except after a hearing under this section. A complaint stating the
17 grounds for suspension or revocation together with a notice of hearing shall be
18 delivered to the licensee at least 5✓ days in advance of the hearing. In the event the
19 licensee cannot be found, complaint and notice of hearing may be left at the place of
20 business stated in the license, which shall be considered the equivalent of delivering
21 the notice of hearing and complaint to the licensee.✓

22 (10) INTEREST AND ~~FEES~~. (a) A licensee may not assess a borrower any fee or
23 charge for database✓ access or usage.

24 (b) A licensee may charge a fee not to exceed \$15✓ for each check presented for
25 payment to the licensee which is returned unsatisfied because the drawer does not

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1 have an account with the drawee, does not have sufficient funds in his or her account,
2 or does not have sufficient credit with the drawee.✓

3 (c) Notwithstanding s. 138.04,✓ a licensee may charge interest at a rate not
4 exceeding 2.75%✓ percent per month on a consumer small loan that is not paid in full
5 upon expiration of the term of the loan or on a subsequent consumer loan described
6 in sub. (12) (a).✓ Such interest shall be calculated at the rate of one-thirtieth✓ of the
7 monthly rate charged for each calendar day that the balance of the loan is
8 outstanding. Interest cannot be assessed on any interest earned under this
9 paragraph.✓

10 (11) PREPAYMENT.✓ (a) A customer may pay a consumer small loan in whole or
11 in part prior to the expiration date of the term of the loan.✓

12 (b) Upon prepayment✓ in full, a refund of the unearned portion of any interest
13 assessed by the licensee must be allowed.✓ The amount of such refund shall not be
14 less than the difference between the interest charged✓ and the interest earned at the
15 agreed rate computed upon the unpaid principal balance of the loan from time to time
16 outstanding prior to repayment in full.✓

17 (12) PROHIBITIONS.✓ (a) A borrower may repay a consumer small loan with the
18 proceeds of a subsequent consumer small loan✓ made by the same or another licensee
19 or an affiliate of the same or another licensee, but if the borrower does so,✓ the
20 borrower may not repay the subsequent consumer small loan with the proceeds of
21 another consumer small loan made by the same or another licensee or an affiliate of
22 the same or another licensee.✓ A repayment of a subsequent consumer small loan and
23 the origination of a new consumer small loan from the same or another licensee or
24 an affiliate of the same or another licensee within a 24-hour period✓ shall be
25 considered proof of violation of the prohibition under this paragraph.✓

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1 (b) No licensee may make a consumer small loan to a borrower[✓] that results in
2 the borrower having an outstanding aggregate liability of more than \$600[✓] to all
3 licensees who have made consumer small loans to the borrower.[✓]

4 (c) No licensee[✓] may make a consumer small loan to a borrower if the licensee
5 determines, knows, or should have known, that the social security number the
6 borrower provided to the licensee is invalid,[✓] was issued within a period of time
7 specified by the division preceding the date of the inquiry, or is issued to a deceased
8 individual.[✓]

9 (d) No licensee may divide or encourage a borrower to divide any consumer
10 small loan for the purpose of obtaining a higher finance charge than would otherwise
11 be permitted under this section.[✓]

12 (e) No licensee may take a note, promise to pay, or any other instrument, in
13 which blanks are left to be filled in after the consumer small loan[✓] has been made.

14 (f) No licensee may advertise,[✓] print, display, publish, distribute, or broadcast,
15 or cause to be printed, displayed, published, distributed, or broadcast,[✓] in any
16 manner, any statement with regard to the rates, terms, or conditions[✓] of a consumer
17 small loan ~~which~~^{that} is false or calculated to deceive. With respect to matters specifically
18 governed by s. 423.301,[✓] compliance with such section[✓] satisfies the requirements of
19 this paragraph.[✓]

20 (g) If a check held by a licensee as a result of a consumer small loan is returned
21 to the licensee from a payor financial institution due to insufficient funds, a closed
22 account, or a stop payment order, the licensee may bring an action to collect the
23 amount of the check,[✓] but may not threaten or pursue criminal action[✓] against a debtor
24 as a result of the debtor's check being returned unpaid or the debtor's consumer small
25 loan not being paid.[✓]

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1 **(13) OTHER PROVISIONS.** (a) All consumer small loans shall be governed by chs.
2 421 to 427, but to the extent that chs. 421 to 427 are inconsistent with this section,
3 this section shall govern.

4 (b) A licensee shall deliver to the borrower, at the time a consumer small loan
5 is made, a statement in the English and Spanish languages including all the
6 disclosures required by the federal Consumer Credit Protection Act. The statement
7 shall disclose that the borrower may prepay the borrower's loan in whole or in part
8 and that if the loan is prepaid in full the borrower will receive a refund of interest
9 as provided by this section. The statement shall also clearly and conspicuously
10 indicate the percentage per year of interest charged for the consumer small loan.

11 (c) A licensee shall give to the borrower a plain and complete receipt for all cash
12 payments made on account of any consumer small loan at the time such payments
13 are made.

14 (d) No consumer small loan, wherever made, for which a greater rate or amount
15 of interest than is allowed by this section has been contracted for or received, may
16 be enforced in this state, and every person in any way participating therein in this
17 state shall be subject to this section. If a licensee makes an excessive charge as the
18 result of an unintentional mistake, but upon demand makes correction of such
19 mistake, the loan shall be enforceable and treated as if no violation occurred at the
20 agreed rate. Nothing in this paragraph shall limit any greater rights or remedies
21 afforded in chs. 421 to 427 to a customer in a consumer credit transaction.

22 **(14) DATABASE.** (a) The division or a database provider shall develop,
23 implement, and maintain a single statewide database that has real-time access
24 through an Internet connection, is accessible at all times to licensees and the
25 division, and otherwise meets the requirements of this section.

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1 (b) The division may operate the database[✓] or may contract with a single 3rd[↑]
2 party provider to operate the database[✓]. If the division contracts with a 3rd[↑] party
3 provider for the operation of the database, the division shall do all the following:

4 1. Ensure that the 3rd[↑] party provider[✓] operates the database according to the
5 provisions of this section.[✓]

6 2. In selecting a 3rd[↑] party provider[✓], consider the cost of providing the service
7 and the 3rd[↑] party provider's ability to meet all the requirements of this[✓] section.

8 3. In selecting a 3rd[↑] party provider, give strong consideration to all of the
9 following:

10 a. The 3rd[↑] party provider's ability to prevent[✓] fraud, abuse, and other unlawful
11 activity associated with consumer small loan transactions, and to provide additional
12 tools for the administration and enforcement of this section.[✓]

13 b. Whether the provider is currently providing a similar service for another
14 state.[✓]

15 (c) The database shall do all of the following:[✓]

16 1. Allow a licensee accessing the database to check a customer's social security
17 number,[✓] or other unique identification number specified by the division,[✓] and report
18 to the division or licensee if that social security number is invalid, was issued within
19 a period of time specified by the division preceding the date of the inquiry, or is issued
20 to a deceased individual.

21 2. Allow a licensee accessing the database[✓] to determine if making a new
22 consumer small loan would cause a violation of this section.[✓]

23 3. Provide information necessary to aid a licensee in complying with any
24 requirements imposed under federal law by the office of foreign assets control of U.S.
25 department of the treasury.[✓]

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1 4. Provide any other information that the division[✓] determines is necessary and
2 requires by rule or contract with the database provider.[✓]

3 (d) The database provider shall do all the following:[✓]

4 1. Use the data collected under this section[✓] only as prescribed in this section
5 and, in the case of a 3rd party provider, as prescribed in the contract with the[✓] division,
6 and for no other purpose.

7 2. Establish and maintain an[✓] alternate process for responding to transaction
8 authorization requests necessary because of technical difficulties occurring with the
9 database that prevent a licensee from accessing the[✓] database through the[✓] Internet.

10 3. Upon receiving notification that a consumer small loan is paid, designate the
11 transaction as closed in the database no later than 11:59 p.m.[✓] on the day that such
12 notification is received.

13 4. Automatically designate a consumer small loan as paid in the database 5
14 days after the expiration date of the term of the loan unless a licensee reports to the
15 database provider before that time that the loan remains open because of the
16 customer's failure to make payment;[✓] that the loan is open because the customer's
17 check or an electronic redeposit is in the process of clearing the banking system;[✓] that
18 the loan remains open because the customer's check is being returned to the licensee
19 for insufficient funds, a closed account, or a stop payment order;[✓] or that any other
20 factors determined by the division are applicable. If a licensee makes such a report,
21 the database provider shall designate the consumer small loan[✓] as an open
22 transaction until the database provider is notified that the transaction is closed.

23 5. If a licensee stops making consumer small loans, designate all open
24 transactions with that licensee as closed in the database 60[✓] days after the date[✓] the
25 licensee stops making consumer small loans, unless the licensee reports to the

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1 database provider before the expiration of the 60-day[✓] period which of its
2 transactions remain open and the specific reason each transaction remains open.

3 6. In response to an inquiry from a licensee, state only that a person is eligible
4 or ineligible for a new consumer small loan and describe the reason for that
5 determination.[✓] Only the person seeking the loan may make a direct inquiry to the
6 database provider to request a more detailed explanation of an ineligibility
7 determination.[✓]

8 (e) If at any time the division determines that a licensee that has stopped
9 making consumer small loans or is not updating the database in accordance with a
10 plan approved under par. (d),[✓] the division shall immediately close or instruct the
11 database provider to immediately close all remaining open transactions of that
12 licensee.

13 (f) The division may, without cost, access the database[✓] for the purposes of
14 enforcing this section.[✓]

15 (g) The division shall, by order or rule, stipulate the period for which data is
16 to be retained in the database only as required to ensure licensee compliance with
17 this act or for enforcement or compliance purposes. The division may require that
18 any identifying customer information be deleted from the database when data is
19 archived. The division may maintain access to archived data for future legislative
20 or policy review.[✓]

21 (h) The division shall, by order or rule,[✓] specify a database transaction fee that
22 the database provider shall charge to licensees to cover the costs of developing and
23 implementing the database,[✓] and accessing the database to verify that a customer
24 does not have any consumer small loans with the licensee or others that in
25 combination with a new transaction will create a violation of this section.[✓] The

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1 database fee is payable directly to the division[✓] in a manner prescribed by the division
2 and, if the department[✓] has contracted with a 3rd-party provider[✓] to operate the
3 database,[✓] the division shall remit the fee to the 3rd-party provider[✓] as specified in the
4 contract.

5 (i) A licensee shall verify a customer's eligibility to enter into a consumer small
6 loan by doing one of the following, as applicable:

7 1. If the database, as determined by the division[✓], is not implemented or is not
8 fully operational, verifying that the customer does not have an open consumer small
9 loan with the licensee ^{or that} ~~which~~ in conjunction with a new consumer small loan would
10 cause a violation of this section. The licensee shall maintain a database of all of the
11 licensee's consumer small loans at all of its places of business and search that
12 database to meet its obligation under this subdivision.[✓]

13 2. If the database, as determined by the division[✓], is implemented and fully
14 operational, accessing the database and verifying that the customer does not have
15 an outstanding consumer small loan with the licensee and does not have open
16 consumer small loans with other licensees that in conjunction with a new consumer
17 small loan would cause a violation of this section.[✓]

18 (j) If the database, as determined by the division, is not fully operational, or the
19 licensee is unable to access the database and, as determined under rules
20 promulgated by the division[✓], the alternate process established under par.[✓](d) 2. is
21 also unavailable, a licensee may rely upon the written verification of the borrower
22 in a statement provided in substantially the following form in at least 12-point[✓] type:

23 "I DO NOT HAVE ANY OUTSTANDING CONSUMER SMALL LOANS WITH
24 THIS LICENSEE AND I DO NOT HAVE MORE CONSUMER SMALL LOANS

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1 WITH ANY OTHER LICENSED CONSUMER SMALL LOAN PROVIDER IN THIS
2 STATE.” ✓

3 (k) If, as determined by the division, ✓ a licensee is unable to access the database
4 due to technical difficulties occurring with the database, the licensee shall utilize the
5 alternate process established under par. (d) 2. ✓

6 (L) A licensee may rely on the information contained in the database as
7 accurate and is not subject to any administrative forfeiture as a result of relying on
8 inaccurate information contained in the database. ✓

9 (m) Before entering into a consumer small loan, a licensee shall submit to the
10 database provider the customer’s name; social security number ✓ or other unique
11 identifier prescribed by the division; address; driver license number or other method
12 of state identification; the amount of the transaction; the customer’s check number;
13 the date of the transaction; the expiration date of the term of loan; ✓ and any other
14 information reasonably required by the division, in a format approved by the
15 division.

16 (n) When a consumer small loan is closed, the licensee shall designate the
17 transaction as closed and notify the database provider no later than ✓ 11:59 p.m. on the
18 day ^{on which} the transaction is closed. The division shall assess an administrative forfeiture
19 of \$100 ✓ for each day that the licensee fails to notify the database provider that the
20 consumer small loan has been closed. It is a defense to the assessment of an
21 administrative forfeiture that notifying the database provider was not possible due
22 to temporary technical problems with the database or to circumstances beyond the
23 licensee’s control.

24 (o) If the licensee stops making consumer small loans, the licensee shall provide
25 to the division a plan acceptable to the division that outlines how the licensee will

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1 continue to update the database[✓] after it stops making consumer small loans. The
2 division shall approve or disapprove the plan and within 5[✓] business days notify the
3 licensee of the decision. If a plan is disapproved[✓], the licensee may submit a new or
4 modified plan for the division to approve or disapprove[✓].

5 (p) Any information in the database regarding any person's transactional
6 history is confidential and is not subject to public copying or inspection under s. 19.35
7 (1).[✓]

8 **(15) PENALTIES.** (a) Any person, partnership, or corporation[✓], or the officers or
9 employees thereof, who violates this section[✓] is guilty of a misdemeanor and shall be
10 fined not more than \$500⁹⁰⁰, imprisoned for not more than 6[✓] months⁹ or both[✓].

11 (b) If a person who is not licensed under this section[✓] makes a consumer small
12 loan to a borrower, the loan is void, the borrower is not obligated to pay any amounts
13 owing on the loan, and the borrower may recover from the person all amounts the
14 borrower has paid to the person[✓]. An action to recover such amounts shall be
15 commenced within one year[✓] after the date of the last scheduled payment on the loan
16 or shall be barred.

17 **(16) PRIVATE CAUSE OF ACTION.**[✓] If a person makes a consumer small loan to a
18 borrower in violation of this section[✓], the borrower may bring an action against the
19 person for damages of \$250[✓] or the amount of the consumer small loan, whichever is
20 greater, plus costs, and, notwithstanding s. 814.04 (1)[✓], reasonable attorney fees.

21 **SECTION 13.** 220.02 (2) (b) of the statutes is amended to read:

22 220.02 (2) (b) The lending of money under s. 138.09 or 138.14[✓], or those relating
23 to finance companies, motor vehicle dealers, adjustment service companies,
24 community currency exchanges and collection agencies under ch. 218.

25 **SECTION 14.** 220.04 (10) of the statutes is amended to read:

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220.04 (10) If it appears to the division that a person has engaged or is about to engage in an act or practice constituting a violation of the laws of this state relating to banks and banking, including this chapter, chs. 217, 218 and 221 to 224 and ss. 138.09 and, 138.12, and 138.14,[✓] or a rule promulgated or order issued under those laws, the division may bring an action in the name of the state in the circuit court of the appropriate county to enjoin the acts or practices and to enforce compliance with the laws, rules or orders, or the division may refer the matter to the district attorney of the appropriate county or, if the alleged violation may be enforced by the attorney general under sub. (12) or s. 220.12, 221.1005 or 224.06 (7) or is statewide in nature, to the attorney general. Upon a proper showing, the court may grant a permanent or temporary injunction or restraining order, appoint a receiver for the defendant or the defendant's assets or order rescission of any acts determined to be unlawful. The court may not require the division to post a bond.

SECTION 15. 220.285 (1) of the statutes is amended to read:

220.285 (1) Any state bank, trust company bank, licensee under ss. 138.09, 138.12, 138.14, 218.0101 to 218.0163, 218.02, 218.04 or 218.05 or ch. 217, or person registered under s. 224.72 may cause any or all records kept by such bank, licensee, or registered person to be recorded, copied or reproduced by any photostatic, photographic or miniature photographic process or by optical imaging if the process employed correctly accurately and permanently copies, reproduces or forms a medium for copying, reproducing or recording the original record on a film or other durable material. A bank, licensee, or registered person may thereafter dispose of the original record after first obtaining the written consent of the division. This section, excepting that part of it which requires written consent of the division, is

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1 applicable to national banking associations insofar as it does not contravene federal

2
3 SECTION 16. 403.414 (7) of the statutes is amended to read:

4 403.414 (7) A person who issues a check or other draft that is not honored upon
5 presentment, because the drawer does not have an account with the drawee or
6 because the drawer does not have sufficient funds in his or her account or sufficient
7 credit with the drawee, is liable for all reasonable costs and expenses in connection
8 with the collection of the amount for which the check or draft was written, except
9 recovery is not permitted under this section if a person licensed under s. 138.09 or
10 138.14 or any other person collected or could have collected a charge for that check
11 or other draft under s. 422.202 (1) (d) or (2m).

12 SECTION 17. 422.201 (3) of the statutes is amended to read:

13 422.201 (3) For licensees under s. 138.09 and or 138.14 or under ss. 218.0101
14 to 218.0163, the finance charge, calculated according to those sections, may not
15 exceed the maximums permitted in ss. 138.09, 138.14, and 218.0101 to 218.0163,
16 respectively.

17 SECTION 18. 425.301 (4) of the statutes is amended to read:

18 425.301 (4) The liability of a merchant under chs. 421 to 427 is in lieu of and
19 not in addition to any liability under the federal consumer credit protection act and
20 ss. 138.09, 138.14, or 218.0101 to 218.0163. An action by a person alleging a violation
21 under chs. 421 to 427 may not be maintained if a final judgment has been rendered
22 for or against that person with respect to the same violation under the federal
23 consumer credit protection act or ss. 138.09, 138.14, or 218.0101 to 218.0163. If a
24 final judgment is entered against any merchant under chs. 421 to 427 and the federal
25 consumer credit protection act or ss. 138.09, 138.14, or 218.0101 to 218.0163 for the

BILL

1 same violation, the merchant has a cause of action for appropriate relief to the extent
2 necessary to avoid double liability.

3 **SECTION 19. Effective date.**

4 (1) This act takes effect on the first day of the 13th month beginning after
5 publication. ✓

6 (END)

d-note
↓

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

date

LRB-2564/1dn

MDK: ^:....

jld

Sen. Sullivan:

This bill is a redraft of 2007 LRB-2221/3. ✓

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.wisconsin.gov

**2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2564/lins
MDK:.....

INSERT 4-1:

SECTION 1. 49.857 (1) (d) 12. of the statutes, as affected by 2009 Wisconsin Act 2, is amended to read:

49.857 (1) (d) 12. A license or certificate of registration issued under ss. 138.09, 138.12, 138.14, 217.06, 218.0101 to 218.0163, 218.02, 218.04, 218.05, 224.72, 224.725, 224.93 or subch. IV of ch. 551.

NOTE: NOTE: Subd. 12. is shown as amended eff. 1-1-10 by 2009 Wis. Act 2. Prior to 1-1-10 it reads: NOTE:

12. A license or certificate of registration issued under ss. 138.09, 138.12, 217.06, 218.0101 to 218.0163, 218.02, 218.04, 218.05, 224.72, 224.93 or subch. IV of ch. 551.

History: 1997 a. 191; 1999 a. 9, 31, 32, 186; 2001 a. 56, 61; 2005 a. 25; 2007 a. 20, 130, 196; 2009 a. 2, 3.

INSERT 6-12:

SECTION 2. 73.0301 (1) (d) 6. of the statutes, as affected by 2009 Wisconsin Act 2, is amended to read:

73.0301 (1) (d) 6. A license or certificate of registration issued by the department of financial institutions, or a division of it, under ss. 138.09, 138.12, 138.14, 217.06, 218.0101 to 218.0163, 218.02, 218.04, 218.05, 224.72, 224.725, 224.93 or under subch. IV of ch. 551.

NOTE: NOTE: Subd. 6. is shown as amended eff. 1-1-10 by 2009 Wis. Act 2. Prior to 1-1-10 it reads: NOTE:

6. A license or certificate of registration issued by the department of financial institutions, or a division of it, under ss. 138.09, 138.12, 217.06, 218.0101 to 218.0163, 218.02, 218.04, 218.05, 224.72, 224.93 or under subch. IV of ch. 551.

History: 1997 a. 237 ss. 301, 307, 532; 1999 a. 9, 31, 32, 186; 2001 a. 56; 2005 a. 25; 2007 a. 1; 2007 a. 20 ss. 2155 to 2158, 9121 (6) (a); 2007 a. 130, 196; 2009 a. 2, 3.

INSERT 26-3:

SECTION 3. 220.285 (1) of the statutes, as affected by 2009 Wisconsin Act 2, is amended to read:

220.285 (1) Any state bank, trust company bank, licensee under ss. 138.09, 138.12, 138.14, 218.0101 to 218.0163, 218.02, 218.04, 218.05, 224.72, or 224.725 or ch. 217 may cause any or all records kept by such bank, licensee, or registered person to be recorded, copied or reproduced by any photostatic, photographic or miniature photographic process or by optical imaging if the process employed correctly,



1 accurately and permanently copies, reproduces or forms a medium for copying,
2 reproducing or recording the original record on a film or other durable material. A
3 bank, licensee, or registered person may thereafter dispose of the original record
4 after first obtaining the written consent of the division. This section, excepting that
5 part of it which requires written consent of the division, is applicable to national
6 banking associations insofar as it does not contravene federal law.

NOTE: NOTE: Sub. (1) is shown as amended eff. 1-1-10 by 2009 Wis. Act 2. Prior to 1-1-10 it reads: NOTE:

7 (1) Any state bank, trust company bank, licensee under ss. 138.09, 138.12, 218.0101 to 218.0163, 218.02, 218.04 or 218.05 or ch. 217, or person registered under
8 s. 224.72 may cause any or all records kept by such bank, licensee, or registered person to be recorded, copied or reproduced by any photostatic, photographic or
9 miniature photographic process or by optical imaging if the process employed correctly, accurately and permanently copies, reproduces or forms a medium for copying,
10 reproducing or recording the original record on a film or other durable material. A bank, licensee, or registered person may thereafter dispose of the original record
11 after first obtaining the written consent of the division. This section, excepting that part of it which requires written consent of the division, is applicable to national
12 banking associations insofar as it does not contravene federal law.

History: 1971 c. 239; 1973 c. 3; 1991 a. 39, 221; 1995 a. 27; 1997 a. 152; 1999 a. 31; 2005 a. 215; 2009 a. 2.

13 **SECTION 4. 321.60 (1) (a) 12.** of the statutes, as affected by 2009 Wisconsin Act

14 2, is amended to read:

15 321.60 (1) (a) 12. A license or certificate of registration issued by the
16 department of financial institutions, or a division of it, under ss. 138.09, 138.12,
17 138.14, 217.06, 218.0101 to 218.0163, 218.02, 218.04, 218.05, 224.72, 224.725, or
18 224.93 or subch. IV of ch. 551.

NOTE: NOTE: Subd. 12. is shown as amended eff. 1-1-10 by 2009 Wis. Act 2. Prior to 1-1-10 it reads: NOTE:

19 12. A license or certificate of registration issued by the department of financial institutions, or a division of it, under ss. 138.09, 138.12, 217.06, 218.0101 to 218.0163,
20 218.02, 218.04, 218.05, 224.72, or 224.93 or subch. IV of ch. 551.

History: 2001 a. 22; 2003 a. 69; 2005 a. 25; 2007 a. 130, 196; 2007 a. 200 s. 142; Stats. 2007 s. 321.60; 2009 a. 2, 3.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2564/1dn
MDK:jld:md

April 7, 2009

Sen. Sullivan:

This bill is a redraft of 2007 LRB-2221/3.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.wisconsin.gov

Barman, Mike

From: Handler, Amy
Sent: Tuesday, June 23, 2009 9:51 AM
To: LRB.Legal
Subject: Jacket Request

Senator Sullivan would like to request a jacket for LRB 2564/1. Thank you.

Amy Handler
Office of State Senator Jim Sullivan
State Capitol, Room 15 South
P.O. Box 7882
Madison, WI 53707
608-266-2512

155
Kunkel, Mark

From: Kunkel, Mark
Sent: Thursday, July 02, 2009 3:11 PM
To: Handler, Amy
Subject: LRB-2564/1 questions

Here's what I've found out regarding your questions from this morning:

1. The bill requires a licensee to file and maintain a bond of \$5,000 in a form prescribed by DFI. The bill does not specify the purpose of the bond, and you may want to contact DFI about how it intends to implement this requirement. As with most of the bill's language, this requirement originated with DFI. However, the purpose of the bond is probably to ensure compliance with the bill's requirements. If a payday lender is found to violate the bill's requirements, the bond may be available to a person (such as a borrower) who is harmed by the violation. However, I'm not sure about the details of how this would work. DFI does require bonds for other regulated entities. For example, a credit service organization must obtain a bond or letter of credit in the amount of \$25,000, which must be "in favor of this state for the benefit of any person who is damaged by a violation of this [subch. V of ch. 422]. The bond or letter of credit shall also be in favor of any person damaged by a violation of [that subchapter]." See s. 422.502 (3) (a) and (c). Perhaps DFI intends to impose requirements similar to the foregoing "in favor" language. However, you could revise the bill to include such language, assuming that that is what DFI intends to do.

2. You asked about current proposals in the U.S. Congress regarding payday loans. I found one bill, H.R. 1214, which is described here: <http://thomas.loc.gov/cgi-bin/bdquery/D?d111:1::/temp/~bdqbRH::/bss/111search.html> According to the bill summary at the foregoing website, the bill does the following:

"Prohibits a creditor from making a payday loan to any consumer unless: (1) specified notices are posted conspicuously in English and Spanish in the creditor's public lending area, or, if the loan is made using the Internet, fax or other means, posted conspicuously on the creditor's public internet site relating to any such payday loan; and (2) the creditor offers the consumer an extended repayment plan that meets specified requirements.

"Sets forth prohibited lender practices, including: (1) requiring a consumer to pay interest and fees that, combined, total more than 15 cents for every dollar loaned in connection with a payday loan; (2) threatening or seeking to have the consumer prosecuted in criminal court to collect the loan; and (3) taking or attempting to take an interest in any of the consumer's personal property to secure the loan.

"Authorizes a consumer to cancel future payment obligations on a payday loan, without cost or finance charges, by: (1) informing the creditor in writing within two days after executing the loan agreement that the consumer wants to rescind the loan; and (2) returning to the creditor the cash amount of the loan principal."

There may be additional bills, and I will keep looking and let you know if I find any more. It doesn't appear that anything has passed on this issue, other than the requirements for military personnel, about which you are already aware.

3. President Obama's proposal to create a consumer financial protection agency is described in detail in section III of the following document: http://www.financialstability.gov/docs/regs/FinalReport_web.pdf Payday loan regulation is not discussed. However, if such a federal agency is created, it might address payday loans. News reports indicate that President Obama submitted a bill to Congress on Tuesday, but I haven't found a bill number. Here is the text of the bill: <http://www.financialstability.gov/docs/CFPA-Act.pdf> Again, it doesn't appear that payday loans are specifically addressed.

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1 ss. 138.09, 138.14, or 218.0101 to 218.0163. An action by a person alleging a violation
2 under chs. 421 to 427 may not be maintained if a final judgment has been rendered
3 for or against that person with respect to the same violation under the federal
4 consumer credit protection act or ss. 138.09, 138.14, or 218.0101 to 218.0163. If a
5 final judgment is entered against any merchant under chs. 421 to 427 and the federal
6 consumer credit protection act or ss. 138.09, 138.14, or 218.0101 to 218.0163 for the
7 same violation, the merchant has a cause of action for appropriate relief to the extent
8 necessary to avoid double liability.

SECTION 19. Effective date.

10 (1) This act takes effect on the first day of the 13th month beginning after
11 publication.

12 (END)

— No limit on fee
for 1st loan

— contract OFI
How does 1st-rate
cap work?

Redright
to do
this

Kunkel, Mark

From: Haberland, Catherine L - DFI [catherine.haberland@dfi.wisconsin.gov]
Sent: Friday, July 24, 2009 9:22 AM
To: Kunkel, Mark
Subject: RE: Payday loan bill

Mark,

Unfortunately the DFI expert on this issue is out until Tuesday. Can this wait until then? I don't understand it well enough to be able to give you substantive answers on your questions.

Catherine Haberland
Executive Assistant
Department of Financial Institutions
345 West Washington Ave. - 5th Fl
Madison, WI 53708
(608) 264-7800

From: Kunkel, Mark [mailto:Mark.Kunkel@legis.wisconsin.gov]
Sent: Thursday, July 23, 2009 3:03 PM
To: Haberland, Catherine L - DFI
Subject: Payday loan bill

<< File: 09-2564/1.pdf >>
Catherine:

The attached draft for Sen. Sullivan is based on a draft from last session that was based, in part, on input from DFI. Can I get DFI's input on how it interprets the draft? In particular, I'm concerned about the meanings of the terms "interest" and "finance charge."

Bill requirements: The attached draft defines a "consumer small loan" as "an unsecured consumer loan in which the amount financed is \$2,500 or less" and as including "an indebtedness evidenced by a promissory note or an agreement to defer presenting a check or debiting a consumer's bank account for a fee." A person who makes such a loan must obtain a consumer small loan license from DFI, rather than a license under s. 138.09 under current law. The s. 138.09 license under current law applies to persons (other than financial institutions) that assess a finance charge on a consumer loan in excess of 18% per year. Sen. Sullivan's intent is to impose no limit on the fee for a consumer small loan that is paid in full upon expiration of the term of the loan. This is consistent with current law, as payday lenders who are licensed under s. 138.09 under current law are not subject to any limits on fees, finance charges, or interest. However, Sen. Sullivan wants to impose limits on interest that is assessed if a borrower fails to pay the loan in full upon expiration of the term of the loan.

Interest: I have set forth the bill's references to interest below. Is it clear that the following provisions pertain only to interest that is charged if a consumer small loan is not paid in full (i.e. the loan principal plus the fee for the loan)? Or can you interpret the references to interest as imposing a limit on the fee as well? In other words, can the fee for the loan be characterized as a payment of interest?

The bill's interest rate provisions are as follows:

-- "Notwithstanding s. 138.04, a licensee may charge **interest** at a rate not exceeding 2.75 percent per month on a consumer small loan that is not paid in full upon expiration of the term of the loan or on a subsequent consumer loan described in [proposed s. 138.14] (12) (a). Such **interest** shall be calculated at the rate of one-thirtieth of the monthly rate charged for each calendar day that the balance of the loan is outstanding. Interest cannot be assessed on any interest earned under this paragraph." See proposed s. 138.14 (10) (c) at the bottom of page 15.

-- "Upon prepayment in full, a refund of the unearned portion of any **interest** assessed by the licensee must be allowed. The amount of such refund shall not be less than the difference between the interest charged and the interest earned at the agreed rate computed upon the unpaid principal balance of the loan from time to time outstanding prior to

how and that arise?

repayment in full." See proposed s. 138.14 (11) (b) on page 16.

-- "A licensee shall deliver to the borrower, at the time a consumer small loan is made, a statement in the English and Spanish languages including all the disclosures required by the federal Consumer Credit Protection Act. The statement shall disclose that the borrower may prepay the borrower's loan in whole or in part and that if the loan is prepaid in full the borrower will receive a refund of **interest** as provided by this section. The statement shall also clearly and conspicuously indicate the percentage per year of **interest** charged for the consumer small loan." See proposed s. 138.14 (13) (b) on page 18.

Additional question: does the above require converting into interest the fee that is paid when a consumer small loan is paid in full upon expiration of the loan?

-- "No consumer small loan, wherever made, for which a greater rate or amount of **interest** than is allowed by this section has been contracted for or received, may be enforced in this state, and every person in any way participating therein in this state shall be subject to this section. If a licensee makes an excessive charge as the result of an unintentional mistake, but upon demand makes correction of such mistake, the loan shall be enforceable and treated as if no violation occurred at the agreed rate. Nothing in this paragraph shall limit any greater rights or remedies afforded in chs. 421 to 427 to a customer in a consumer credit transaction." See proposed s. 138.14 (13) (d) on page 18.

Finance charge: Also note that bill refers to "finance charge" as follows:

--- "No licensee may divide or encourage a borrower to divide any consumer small loan for the purpose of obtaining a higher **finance charge** than would otherwise be permitted under this section." See proposed s. 138.14 (12) (d) on page 17.

-- The bill amends s. 422.201 (3) as follows: "For licensees under s. 138.09 ~~and~~ or 138.14 or under ss. 218.0101 to 218.0163, the finance charge, calculated according to those sections, may not exceed the maximums permitted in ss. 138.09, 138.14, and 218.0101 to 218.0163, respectively."

Does finance charge mean interest, or does it also refer to the fee for the loan?

Mark D. Kunkel
Senior Legislative Attorney
Legislative Reference Bureau
(608) 266-0131

Kunkel, Mark

From: Lee, Lisa A - DFI [Lisa.Lee@dfi.wisconsin.gov]
Sent: Thursday, July 30, 2009 9:56 AM
To: Kunkel, Mark
Cc: Hellmer, Ray L - DFI; Plale, Jean M - DFI
Subject: FW: Payday Lending Bill

Mark:

Here are the changes DFI suggests for the payday lending bill discuss this morning with Jean Plale, Ray Hellmer, and myself.

Lisa Lee
 Licensed Financial Services
 Wisconsin Department of Financial Institutions
 P.O. Box 7876
 Madison, WI 53707-7876

345 W. Washington Ave., 4th Floor
 Madison, WI 53703
 Phone (608) 267-1708 Fax (608) 267-6889
 lisa.lee@wisconsin.gov

From: Plale, Jean M - DFI
Sent: Wednesday, April 22, 2009 3:27 PM
To: Haberland, Catherine L - DFI
Cc: Lee, Lisa A - DFI; Mach, Mike J - DFI
Subject: Payday Lending Bill

We have the following comments/suggestions on the payday lending bill that was discussed with Senator Sullivan's office yesterday.

✓ Page 7, line 7. Change to "A consumer small loan licensee under s. 138.14."

✓ Page 9, lines 4-7. Change to "A person may not originate or service a consumer small loan involving a Wisconsin resident without first having obtained from the division a license under sub. (5) for each place of business at which the person originates or services consumer small loans involving Wisconsin residents. Such a license is required for, and this section applies to, all consumer small loans involving a Wisconsin resident, regardless of whether the loan is originated by face-to-face contact, mail, telephone, Internet, or any other means."

✓ Page 12, lines 11-13. Add "A sales finance company under ss. 218.0101 to 218.0163."

✓ Page 16, line 23. Change "\$600" to "\$2,500."

✓ Page 21, line 9. Eliminate the word "or"

✓ Page 23, line 13. Change "the expiration date of the term of loan" to "the expiration date of the loan."

1 - note maturity agreed

07/30/2009